

Volume 1, Pages 1-92

Exhibits: 1-7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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DAVID SETH WORMAN, et al.,
Plaintiffs,

vs.

CHARLES D. BAKER, in his official
capacity as Governor of the
Commonwealth of Massachusetts, et al.,

Defendants

* * * * *

Rule 30(b)(6) DEPOSITION OF EXECUTIVE OFFICE OF
PUBLIC SAFETY AND SECURITY (by David Marc Solet)

Wednesday, August 30, 2017, 9:31 a.m.

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1 listed as a Colt AR-15 and thus was an enumerated
2 weapon and it showed up and it had a manufacture
3 date after the grandfathering provision expired,
4 then I think you'd be able to conclude that that was
5 a banned weapon.

6 Q. And that's not an analysis that you've done
7 in preparation for this deposition?

8 A. At this time, no -- and I think that
9 analysis alone would be highly underinclusive. That
10 would only be for Colt weapons and would only be for
11 ones that are listed as AR-15s. If you were looking
12 for ones that were copies or duplicates of AR-15s,
13 you'd presumably have to look for a different model.
14 And so I expect, to actually get close to the number
15 you're looking for, you'd have to do that for each
16 type of assault weapon and then do an analysis of
17 whether each other weapon that was sold was or was
18 not a copy or duplicate.

19 Q. So looking at the data alone would not be
20 sufficient?

21 A. I wouldn't say looking at the data alone
22 wouldn't be sufficient. It's that the data has
23 never been -- the data that FRB keeps has never
24 been -- it's never been -- there's never been an

1 entry made that says this is a copy or duplicate,
2 this is not a copy or duplicate. There's no tab
3 that you could click that would say give me all the
4 copies or duplicates, the way there would be if you
5 were saying give me all the rifles or give me all
6 the handguns. It would be a much more detailed,
7 time-consuming, and complex analysis.

8 Q. Since you mentioned handguns, do you have
9 an idea of the number of handguns that were sold in
10 Massachusetts last year?

11 A. I don't know the answer to that.

12 Q. Do you have an idea of the number of
13 shotguns that were sold?

14 A. It's in the thousands, but I don't know how
15 many.

16 Q. Do you have a sense of whether the number
17 of handguns sold is more than the number of rifles
18 sold?

19 A. I don't know the answer to that.

20 Q. Have you looked at any data related to the
21 number of firearms of any kind sold in
22 Massachusetts?

23 A. I have, yes.

24 Q. And what data have you looked at?

1 through 2015. If you could take a moment and look
2 at that. I know it's a big packet of materials, so
3 take as much time as you need.

4 A. Okay.

5 Q. Have you ever looked at UCR data before?

6 A. Yes.

7 Q. Have you ever looked at Table 20 before?

8 A. No, I don't believe so.

9 Q. Table 20 states that it is murder by state
10 and type of weapon. Does that accord with what you
11 believe this document to be?

12 A. It certainly appears to be that.

13 Q. If I could turn your attention to the
14 second page of what you have there?

15 A. Yes.

16 Q. At the very top of the second page it has
17 Massachusetts data.

18 A. Yes.

19 Q. Based on this data, can you tell me the
20 number of murders that were committed with a rifle
21 in Massachusetts in 2005?

22 MR. PORTER: Objection to the form.

23 Q. You can answer.

24 A. Are you asking me what the document says?

1 Q. Yes.

2 A. The entry is one.

3 Q. If you could turn to the next table, which
4 should be, I think, two pages after. It's Table 20,
5 for 2006.

6 A. Yes.

7 Q. And again, if you could turn to the second
8 page of that.

9 A. Yes.

10 Q. What does the document say about the number
11 of murders committed with a rifle in that year in
12 Massachusetts?

13 A. It says two with rifle and 40 with type
14 unknown.

15 Q. And type unknown means what?

16 A. I assume it means someone was murdered with
17 a firearm of some type but the authorities were
18 never able to determine what type of weapon.

19 Q. So we don't know whether that includes
20 rifles?

21 A. I would say I know if that includes rifles.

22 Q. You do?

23 A. Well, it would be a shock to me if unknown
24 weapon only meant handgun, because then they would

1 have listed it as handgun. I think unknown means
2 unknown.

3 Q. So we can't know.

4 A. Well, I think that you know that the term
5 "unknown" includes all unknown firearms, and one of
6 those is rifles.

7 Q. But you don't know how many of those 40, if
8 any, actually would have been rifles.

9 A. No, of course not.

10 Q. And if you could look at the last column
11 there, hands and feet: How many people were
12 murdered by hands and feet in that year?

13 MR. PORTER: Which page?

14 MR. NARDONE: The same page.

15 A. This is the second page for the 2006 data?

16 Q. Yes.

17 A. It says four.

18 Q. If you could turn to the next table, which
19 is the 2007 data.

20 A. Yes.

21 Q. How many murders were committed with a
22 rifle in Massachusetts that year?

23 MR. PORTER: Marc, I'm sorry, I can't
24 keep up with you.

1 A. It says one.

2 MR. PORTER: This is 2007?

3 MR. NARDONE: 2007, Massachusetts.

4 MR. PORTER: Gotcha.

5 Q. And the number of individuals murdered in
6 Massachusetts with hands and feet that year?

7 A. It says 14.

8 Q. If you could go to the table for 2008. In
9 Massachusetts in 2008 what does this indicate for
10 the number of individuals murdered with rifles?

11 A. It says two.

12 Q. If we could move on to 2009. The number of
13 individuals murdered with rifles?

14 MR. PORTER: Is there a question there?

15 Q. What does the document state about the
16 number of individuals murdered with rifles in 2009?

17 A. It says two.

18 Q. Move to the next one, which is the 2010
19 data. I believe it's on the second page of that
20 one. What does that document indicate about the
21 number of individuals murdered with rifles in
22 Massachusetts in 2009? Excuse me, 2010.

23 A. It says zero.

24 Q. If we can move to 2011, the second page

1 again. What does that document state about the
2 number of individuals murdered with rifles in 2011?

3 A. It says zero.

4 Q. And if we could move to 2012, second page.
5 What does that document state about the number of
6 individuals murdered with rifles in Massachusetts in
7 2012?

8 A. It says zero.

9 Q. Moving to 2013, second page: What does
10 that document indicate about the number of
11 individuals murdered with rifles in that year?

12 A. It says two.

13 Q. In 2014, the second page, what does the
14 document state about the number of individuals
15 murdered with rifles in that year?

16 A. It appears to say zero.

17 Q. And the last one of these, I promise, the
18 second page: What does that document state about
19 the number of individuals murdered with rifles in
20 Massachusetts that year?

21 MR. PORTER: What year is this, now?

22 MR. NARDONE: This is the year 2015.

23 A. It says one.

24 Q. I'd be happy to provide you with this. If

1 you could check my math, but I understand that based
2 on the document that we just looked at, the number
3 of murders committed with a rifle from 2005 through
4 2015 is 11.

5 MR. PORTER: Objection to the form of
6 the question.

7 Q. Can you please take a look at those
8 documents and tell me the number of murders that
9 were committed between 2005 and 2015 in
10 Massachusetts with rifles, based on the documents in
11 front of you.

12 A. Do you really want me to do the math? I'm
13 glad to accept your math. It's simple math.

14 Q. You're willing to accept that it's 11.

15 A. That's fine.

16 Q. If I were to represent to you that over
17 that time period there were 1776 total murders in
18 Massachusetts, is that something you'd like to check
19 or are you okay with that representation?

20 MR. PORTER: Objection to the form. Are
21 you asking him if he'd like to check? Or what's the
22 question?

23 MR. NARDONE: I represented to him that
24 there were 1776 murders in Massachusetts over the

1 time period contained in those documents.

2 MR. PORTER: Represented based on the
3 exhibit?

4 MR. NARDONE: Yes.

5 MR. PORTER: Okay.

6 Q. Do you accept that number?

7 A. Sure.

8 MR. PORTER: As appearing in the
9 exhibit.

10 MR. NARDONE: As appearing in the
11 exhibit.

12 Q. Do you have any reason to believe that
13 those numbers are inaccurate?

14 A. So I haven't ever attempted to reconcile
15 the FBI Uniform Crime Reporting data with State data
16 on homicides. I expect that it tracks very closely.
17 It might not track exactly. My experience with
18 aggregating data from criminal justice agencies is
19 that there is not always uniform reporting. I've
20 seen this done with hate crimes data, with other
21 kinds of data. There are sometimes jurisdictions
22 that don't do a good job of reporting. But I'd
23 expect with homicides you'd probably see less
24 underinclusion than some other crimes.

1 cause any undue delay.

2 MR. NARDONE: It's about 11:00 o'clock,
3 so I imagine a lunch break will probably be right
4 around where we're talking about.

5 MR. KLEIN: Are you confident enough
6 that I can call her and let her know --

7 MR. NARDONE: I'm not prepared to give
8 an exact time right now.

9 (Discussion off the record.)

10 Q. Is anyone in EOPSS responsible for
11 determining whether a firearm is a copy or
12 duplicate?

13 A. There's nobody who has primary
14 responsibility. There's no single person who that's
15 their primary responsibility. State Troopers who
16 are charged with enforcing the laws of
17 Massachusetts, parole officers who have a similar
18 role, if they were to encounter a weapon, that would
19 be part of their responsibility in terms of
20 determining whether it was evidence of a crime or
21 not evidence of a crime.

22 Q. So the law enforcement officers and
23 probation officers under the umbrella of EOPSS would
24 have that --

1 A. Not probation officers. Parole officers
2 are EOPSS personnel.

3 Q. So the law enforcement officers and parole
4 officers under EOPSS would have that responsibility
5 in the field.

6 A. That's right.

7 Q. If you know, does EOPSS have any written
8 protocols as to how to determine whether a weapon is
9 a copy or duplicate?

10 A. No. I think that the personnel would be
11 relying on the Attorney General's guidance, which is
12 the document that you've shown.

13 Q. So if you could turn to Page 4 of that
14 document, which is Exhibit 6. It states that, in
15 the second paragraph below the number 2, it states,
16 "The fact that a weapon is or has been marketed by
17 the manufacturer on the basis that it is the same as
18 or substantially similar to one or more enumerated
19 weapons will be relevant to identifying whether the
20 weapon is a copy or duplicate." Do you see that
21 statement?

22 A. I do.

23 Q. What is EOPSS's position on what the word
24 "relevant" means there?

1 MR. PORTER: Objection to the form.

2 Q. You can answer.

3 A. I would take the term "relevant" to mean
4 should be a factor in the analysis.

5 Q. Is that factor contained in either of the
6 tests set forth under guidance?

7 A. No.

8 Q. So it's your understanding that the two
9 tests that are set forth are not exhaustive factors?

10 A. I mean, I would say that the similarity
11 test contains the phrase "substantially similar," so
12 that if somebody was advertising their weapon as
13 being identical or, say, quote, "substantially
14 similar," that that would be a factor that would be
15 legitimate to use in assessing whether it was
16 substantially similar. You could take the
17 manufacturer to some degree at their word.

18 Q. So that's a reliance on the manufacturer's
19 determination, then.

20 A. If a manufacturer were to advertise a
21 weapon saying "This has many duplicate parts of a
22 banned weapon," yes, if I were a State Trooper, I
23 would consider that important to know.

24 Q. If you go down two paragraphs below the

1 configuration is, that makes sense. How is a law
2 enforcement officer in the field to determine the
3 original manufacture to determine whether there's
4 probable cause for an arrest?

5 A. That's actually what I meant my response to
6 answer. If a person is highly expert in firearms, I
7 expect that they would be in a superior position to
8 recognize a weapon and know what its original status
9 was, as was originally sold.

10 Q. Okay. If I could turn your attention to
11 that same document, on Page 2. At the top you'll
12 see little ii.

13 MR. PORTER: Maybe we could set some
14 context here, if that would be okay.

15 MR. NARDONE: Absolutely. That's
16 exactly what I was about to do.

17 Q. You'll find that under the heading "The
18 term 'assault weapon' shall not include." Little ii
19 states, "Any weapon that is operated by manual bolt,
20 lever, or slide action."

21 A. Yes.

22 Q. How would a law enforcement officer in
23 EOPSS's umbrella determine that -- when they found a
24 bolt action rifle in the field, its original